90-684

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Supreme Court, U.S.
FILED
SEP 24 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

CLAWZELLE WIGGINS,
Petitioner,

versus

CHRYSLER CORPORATION,
Respondent,

ACUSTAR, INC.,
Respondent,

UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), CHRYSLER INTERNATIONAL,
Respondent,

UNITED AUTOMOBILE, AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), CHRYSLER LOCAL 1435,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX

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APPENDIX

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CERTIFICATE OF SERVICE

3 copies of the foregoing Appendix are served on Chrysler Attorney, Thomas A. Dixon, and on UAW Attorney Joan Tarzewski, this September 24, 1990.

John G. Rust
Petitioners Counsel

No. 89-3662

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

CLAWZELLE WIGGINS, :Filed: June 25, 1990

Plaintiff-Appellant

:ON APPEAL FROM THE
v. UNITED STATES
:DISTRICT COURT FOR
CHRYSLER CORPORATION; THE NORTHERN
ACUSTAR, INC.; :DISTRICT OF OHIO
UNITED AUTOMOBILE,
AEROSPACE,
AGRICULTURAL
IMPLEMENT WORKERS OF
AMERICA (UAW),
CHRYSLER INTERNATIONAL;
UNITED AUTOMOBILE,
AEROSPACE,
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA
(UAW),
CHRYSLER LOCAL 1435

Defendants-Appellees.

BEFORE: MERRITT, KEITH and JONES,
Circuit Judges.

THIS CAUSE. Having come to be heard upon the record, the briefs, and the oral argument of the parties, and upon due consideration thereof.

IT IS ORDERED that the judgment of the district court be, and it hereby is, affirmed upon the opinion of the district court.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CLAWZELLE WIGGINS, *FILED: June 22 1989

Plaintiff, *

vs. *No. C88-7349

CHRYSLER CORPORATION, et al., *

Defendants. *OPINION AND ORDER *

* * * * * * * * * *

This case is before the court on the defendants' motions for summary judgment. The issue in this case is whether this court should exercise its discretion and excuse the plaintiff's failure to exhaust intraunion remedies.

The plaintiff, Clawzelle Wiggins, was employed by defendant Chrysler Corporation through its subsidiary, Acustar, Inc., (hereinafter both corporations will be referred to as "Chrysler"), at its plant in Perrysburg, Ohio, from October 9, 1967 until August

29, 1986. PLaintiff was employed as a maintenance worker and was a member of defendants UAW International and Local 1435 (hereinafter "Union"). The terms and conditions of plaintiff's employment were governed by a collective bargaining agreement entered into by Chrysler and the Union.

The collective bargaining agreement sets forth a "Chronic Absentee Procedure." The Procedure applies "to employees who avoid corrective, progressive discipline for absences by attributing them to frequent and recurring illnesses." Plaintiff's Memorandum in Opposition to All Defendants' Motions for Summary Judgment, Exhibit 1. Employees with the worst attendance records (rates of absenteeism above 20%) are identified by the Union Attendance Counselor and the Labor Relations Supervisor. Such employees are counseled that their attendance records are unsatisfactory.

If the employee's attendance record does not improve after the counseling session, the employee is notified in writing that his attendance record has not improved. The employee's record is then reviewed by the Labor Relations Supervisor and the Union Attendance Counselor. The Labor Relations Supervisor will either counsel the employee again or discipline the employee. In extreme cases, the employee may be terminated.

If the employee is disciplined or terminated, the Union may submit a grievance at the third step of the Grievance Procedure within five working days. This grievance may be appealed to the Appeal Board. In the case of Termination, if the grievance is appealed to the Appeal Board, the National Attendance Council may first review the merits of the case and, within 15 working days of the date of its review, may rescind, modify or agree with the termination.

The decision of the Council is final and binding and is not subject to further appeal under the collective bargaining agreement. If the National Attendance Council cannot reach a decision, the case is referred back to the Appeal Board for disposition. If the Appeal Board is unable to settle the case, it may be appealed to the Impartial Chairman.

On August 20, 1985, the Plaintiff was counseled by the Labor Relations Supervisor and his Union Representative, Bernie Sailor, that his absentee rate for the period December 31, 1984 through June 30, 1985 was 23.9%.[1]

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1 Although the Chronic Absentee Procedure calls for counseling by the Labor Relations Supervisor and the Union Attendance Counselor, a Union Attendance Counsel had not been appointed at the time Plaintiff was counseled. The Union was represented at plaintiff's counseling session by Bernie Sailor, plaintiff's Union Representative.

The plaintiff was informed that if his attendance record did not improve significantly, he would be counseled again, disciplined or terminated. The plaintiff objected to Chrysler's initiation of the Chronic Absentee Procedure because he alleged that many of the days on which he was absent from work were not includable in his absenteeerate because they were days he spent in the hospital. Plaintiff appealed to the National Attendance Council which found that Chrysler had correctly determined the plaintiff's absentee rate and appropriately invoked the Chronic Absentee Procedure.

The plaintiff's attendance record was evaluated for the sixth-month period ending May 30,]986. Chrysler determined that his rate of absenteeism for the period was 46.7%. The plaintiff was discharged on August 29, 1986.

The Union filed a grievance on behalf of the plaintiff on September 2,

1986. Chrysler denied the grievance, and the Union appealed to the National Attendance Council. On April 1, 1988, the National Attendance Council decided that the plaintiff should be offered reinstatement. Upon his return to work, his discharge would be changed to a disciplinary layoff, without backpay for the period during which time he was away from the plant. The plaintiff refused reinstatement on those terms. He did not pursue internal Union appeal procedures to challenge the Union's handling of his grievance.

The plaintiff filed this case in May, 1988, alleging several causes of action. An amended complaint was filed June 8, 1989, alleging two causes of action: (1) in Count I, the plaintiff alleges that Chrysler breached the collective bargaining agreement and the Union breached its duty of fair representation in violation of §301 of the Labor Management Relations Act, 29 U.S.C. §185; and (2) in Count II, the plaintiff

alleges that Chrysler discriminated against him on account of his race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

Summary judgment is appropriate when the moving party shows that "there is no genuine issue as to any material fact and that moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (c). "(T)his standard provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505, 2510 (1986) (emphasis in original). In deciding a motion for summary judgment, this court will view the evidence in the light most favorable to the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 106 S. Ct. 1348,

1356-57 (1986). The non-moving party, however, may not rest upon the allegations or denials of the pleadings. Rule 56 (e) requires that the non-moving party "set forth specific facts showing there is a genuine issue for trial." Fed. R. Civ. P. 56(e). See also Celotex Corp. v. Catrett, 106 S. Ct. 2548, 2553 (1986).

An employee seeking a remedy for his employer's breach of the collective bargaining agreement and his union's breach of its duty of fair representation must exhaust the grievance and arbitration procedures established by the collective bargaining agreement before maintaining a § 301 suit. Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53 (1965). The employee must also exhaust internal union grievance and appeals procedures before maintaining a § 301 suit unless: (1) union officials are so hostile that the employee could not possibly obtain a fair hearing; or (2) the

intraunion procedure would be inadequate either to award the full relief the employee seeks under § 301 or to reactivate the employee's grievance; or (3) exhaustion of intraunion procedure would unreasonably delay the employee's opportunity to obtain a judicial hearing on the merits of his claim. Clayton v. International Union, 451 U.S. 679, 689 (1981). The burden is on the employee to show that his failure to exhaust intraunion remedies should be excused because of one of the factors enumerated above. Monroe v. International Union, 723 F. 2d 22, 25 (6th Cir. 1983) (per curiam). Contra Johnson v. General Motors Corp., 641 F. 2d 1075, 1079 (2d Cir. 1981). Whether to excuse the exhaustion requirement is a matter of this court's discretion. Clayton, 451 U.S. at 689.

The plaintiff does not dispute that the Constitution of the International Union requires that Union members

aggrieved by any Union action must first exhaust intraunion remedies before initiating a court action to redress his grievance. See Motion of Defendants UAW International and UAW Local 1435 for Summary Judgment, Exhibit 8. The plaintiff submits three reasons why this court should exercise its discretion to excuse his failure to exhaust intraunion remedies.[2]

First, the plaintiff argues that there is a genuine issue of material fact as to whether he can be afforded the complete relief he seeks in his § 301 suit against Chrysler and the Union. The plaintiff is seeking money damages, reinstatement, expungement from his employment record of all evidence of any discharge or proceeding related thereto, reinstatement of all his

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2 The plaintiff has not alleged that Union officials are so hostile to him that it would be impossible to obtain a fair hearing.

seniority rights under the collective bargaining agreement, expungement of all his recorded absences, and attorneys' fees and costs. The thrust of plaintiff's argument is that Clayton requires that his failure to exhaust intraunion remedies be excused because there is an issue of fact as to whether each item of relief that he seeks in his § 301 suit is available to him through intraunion remedies. The plaintiff's analysis of Clayton is flawed. The Court stated that an employee should not be required to exhaust intraunion remedies where "the internal union appeals procedures would be inadequate either to reactivate the employee's grievance or to award him the full relief he seeks under § 301." Clayton, 451 U.S. at 689 (emphases added). The plaintiff in Clayton was not required to exhaust intraunion remedies because even if he had invoked intraunion remedies, the union would

not have been able to pursue his grievance because it had failed to notify the employer within 15 days of the employer's decision that the union intended to seek arbitration of Clayton's grievance. The Court noted:

> The UAW informs us that "(s)ome employers and unions have, through collective bargaining, agreed to allow the reinstatement of withdrawn grievances where a union tribunal reverses the union's initial decision. This is true, for example, in the current UAW contracts with the major automobile and agricultural implement manufacturers." Brief for Respondents in No. 80-5049, p. 18, no.40. In such cases, the relief available through the union's internal appeal procedures would presumably be adequate.

Clayton, 451 U.S. at 691, n.18. Chrysler and the Union have entered into such an agreement in this case whereby an employee who is successful in internal Union appeals may have his grievance reinstated into the grievance procedure at the level at which the

original disposition of the grievance occurred. Motion of Defendants UAW International and UAW Local 1435 for Summary Judgment, Exhibit 11. In Monroe v. International Union, the Sixth Circuit held that the plaintiff had failed to show the inadequacy of intra-union remedies where the employer agreed to reinstate a grievance if the employee were successful in the intraunion appeals process. 723 F.2d at 25. Accord Wozniak v. International Union, 842 F. 2d 633, 635 (2d Cir. 1988). Cf. Hill v. General Motors Corp., 697 F. Supp. 1274, 1278-79 (W. D. N. Y. 1988) (intraunion remedy held to be inadequate despite employer's agreement to reinstate grievance because plaintiff was required to waive claims for backpay or damages against employer in return for reinstatement of the grievance and because local union no longer existed and international union

disclaimed responsibility for the debts of a defunct local.)

The plaintiff's second argument is that because it took over 18 months for the National Attendance Council to process his appeal, to exhaust intraunion remedies would unreasonably delay his opportunity to obtain a judicial hearing on the merits of his claim. The court does not agree. The fact that the plaintiff spent at least 18 months pursuing contractual remedies under the collective bargaining agreement is irrelevant to whether his pursuit of intraunion remedies would unreasonably delay his day in court. See Curry v. Ford Motor Co., 646 F. Supp. 261, 264 (W. D. Ky. 1983). The key word in analyzing the third Clayton factor is "unreasonably." The plaintiff has taken no action whatsoever in pursuit of his intraunion remedies and has presented no evidence that such a pursuit would

result in an unreasonable delay in filing a § 301 suit. Compare Ruzicka v. General Motors Corp., 523 F. 2d 306, 311 (6th Cir. 1975) (court held that pursuing intraunion remedies for 27 months was sufficient exhaustion of those remedies to permit a § 301 suit), cert. denied, 464 U.S. 982 (1983), with Willette v. Ford Motor Co., 583 F. 2d 852, 855-56 (6th Cir. 1978) (failure to pursue intraunion remedies at all bars plaintiff's § 301 suit).

The plaintiff's third argument in favor of excusing him for failure to pursue intraunion remedies is that the Union failed to inform him as to the status of his grievance and the available intraunion remedies. The plaintiff's argument is premised on a mistaken notion of the Union's duty. The Union is not required to inform its members of intraunion remedies. Monroe v. International Union, 723 F.2d at 26.

The plaintiff does not dispute that he received a copy of the UAW Constitution and Solidarity, the Union's weekly newsletter. The plaintiff contends that despite his receipt of these documents outlining his intraunion remedies, his ninth-grade education prevented his understanding them fully. The plaintiff's contention is not persuasive. Even if the court were to agree reluctantly that a ninth-grade education is insufficient to read and comprehend the Union Constitution and newsletter, the plaintiff has had the benefit of an attorney since at least May, 1988, when he filed his suit. If no one else was able to apprise him of his intraunion remedies and duty to exhaust them before filing a § 301 suit, his attorney should have been able to do so. See Wozniak, 842 F.2d at 636 (" (The employee) was represented by an attorney who had

the necessary training to read and understand the union constitution.").

Because the plaintiff has failed to make the requisite showing to excuse his failure to exhaust intraunion remedies, Chrysler's and the Union's motions for summary judgment as to Count 1 of the amended complaint are sustained.

In order to prove that he has been the victim of race discrimination in violation of Title VII, the plaintiff must set forth a prima facie case by showing that he was treated differently than similarly situated white employees. McDonnel Douglas Corp. v. Green, 411 U.S. 792, 804 (1973). The plaintiff has filed to make the requisite showing for a prima facie case.

The plaintiff's evidence shows that 21 employees had a rate of absenteeism higher than his own from December 31, 1985 through June 30, 1986. The plaintiff alleges that

two of these employees, Caryl Blasingham and Joe DiLucia, were treated differently than he. First, the plaintiff has produced no evidence as to the race of these two employees. Second, assuming arguendo that these two employees are white, it does not appear from their attendance records that they were treated differently than the plaintiff. Ms. Blasingham was placed in the Chronic Absentee Procedure program and was counseled in April, 1985. Following this counseling session, her attendance improved and she was released from the program. Her rate of absenteeism rose above the 20% threshold, however, in 1986, and she was placed in the program again. Contrary to the plaintiff's assertions, Ms. Blasingham did not receive two counseling sessions following a continuous period of high absenteeism. Therefore, she was not treated differently than the plaintiff. Mr. DiLucia was placed in the program

and counseled in November, 1986. By February, 1987, his rate of absenteeism fell below the 20% threshold. Thus, Mr. DiLucia was not treated differently than the plaintiff. Because the plaintiff has failed to show that he was treated differently than similarly situated white employees, he has failed to state a prima facie case, and Chrysler is entitled to summary judgment as to his Title VII claim.

It is therefore

ORDERED that the defendant's motions for summary judgment are sustained;

FURTHER ORDERED that this case is dismissed at plaintiff's costs.

Richard B. McQuade, Jr. (s)
UNITED STATES DISTRICT JUDGE

Toledo, Ohio
June 21, 1989

CONSTITUTION

of the

INTERNATIONAL UNION

United Automobile
Aerospace and
Agricultural Implement
Workers of America
UAW[R]

Adopted at Anaheim, California
June, 1986

ARTICLE 33

Appeals

Section 1. WHAT MAY BE APPEALED. Any suborinate body or member thereof shall have the right under this article to appeal any action, decision, or penalty by any of the following unless otherwise provided:

(a) The International Union, its International Executive Board or any of its Officers, Regional Directors or International Representatives;

(b) Any adminstrative arm of the International Union, including its National Departments and Bargaining Councils;

(c) A Local Union, or any of its units, committees, officers, committeepersons or stewards; or

(d) Any other subordinate body of the International Union. A failure or refusal to act by any of the foregoing, where it allegedly results in an injury, may also be appealed.

Section 2. LEVELS OF APPEAL. This specifies the levels of appeal for

various types of cases.

(a) The normal route of appeal is: FIRST, to the membership or delegate body immediately responsible for the official, officer, action or decision under challenge; SECOND, to the International Executive Board, unless the appeal begins there; and THIRD, to the Convention Appeals Committee or Public Review Board, as may be appropriate. This normal route of appeal shall be followed in all cases, except where this Constitution makes specific provision for an alternate route of appeal. For purposes of illustration, in the following common cases the normal route of appeal is as follows:

In any challenge to the handling or disposition of a grievance: Where the challenge is against

a Local Union committeeperson, steward, Bargaining Committee, officer or other Local Union Official -- the levels of appeal are first to the unit of an Amalgamated Local Union, then to the Union; then to the International Executive Board and then to the Convention Appeals Committee, or where appropriate the Public Review Board. Where the challenge is against an International Representative, Regional Director, International Officer or National Department -- the levels of appeal are first to the International Executive Board, and then to the Convention Appeals Committee, or where appropriate to the Public Review Board.

For any decision of a Local Union, or unit of an Amalgamated Local Union, on a Trial Committee's recommendation -- the levels of appeal are first to the International Executive Board and then to the Convention Appeals Commitee or the Public Review Board.

For disputes or questions in controversy, including all questions involving interpretation of this Constituion by the International President under Article 13, Section 8 -- the levels of appeal are to the International Executive Board and then to the next Constitutional Convention.

For any decision of the International President under Article 48, Section 5 -- The levels of appeal are to the International Executive Board

and then to the Convention Appeals Committee or the Public Review Board.

(b) In the types of cases listed below, the appeal shall be limited as specified:

For any action or decision by a national or corporate bargaining council or sub-council, or by a national or regional wage-hour council or sub-council, the route of appeal shall be directly to the International Executive Board. There shall be no further appeal from the decision of the International Executive Board.

For any action or decision pertaining to the following matters; sports and other recreational activities; rulings of the Chair on procedural questions arising during Local Union membership

and other meetings; the appointment and/or removal of appointed officials on Local Union committees; and the sending of authorized members from a Local Union to any convention, conference, or other meeting, whether sponsored by the UAW or some other organization, except for the UAW's Constitutional Convention; unless Article 46 Section 1, or some other substantive provision of this Constituion is implicated, the appeal shall be to the membership of the Local Union, or in the case of an Amalgamated Local Union, first to the membership of the appellant's unit, if necessary, and then to the delegate body or general membership of the Amalgamated Local Union. There

shall be no further appeal from the decision of the membership of the Local Union or Amalgamated Local Union.

For any action or decision pertaining to the seating of members at any conference or other meeting sponsored by the UAW, if there is a Credentials Committee for the conference or meeting, the appeal shall be first to the Credentials Committee and then to the general delegate body of the conference or meeting. If there is no Credentials Committee for the conference or meeting, the route of appeal shall be directly to the Director of the National Department of Region responsible for the conference or meeting. There shall be no further appeal from the decision of the general delegate body or the Director of

the National Department or Region, as the case may be.

For any action or decision pertaining to the appointment or removal of special purpose representatives, such as Benefit Representatives or Health and Safety Committeepersons by a National Department under the provisions of a collective bargaining agreement, the appeal shall be directly to the International Executive Board. There shall be no further appeal from the decision of the International Executive Board.

For an interpretation of a collective bargaining agreement by a National Department or Regional Director, where the interpretation is so obviously correct that no purpose will be

served by an appeal, and where it is consistent with other provisions of this Constitution and International Union policy, the appeal shall be directly to the International President. There shall be no further appeal from that decision.

Section 3. PROCEDURES AT EACH LEVEL OF APPEAL. This Section specifies the procedures at each level of appeal. In addition, any appeal is subject to the general requirements of Section 4 of this Article. Where this Constitution makes specific provision for alternate procedures, those procedures shall control.

(a) LOCAL UNION. An appeal to the Local Union may be made at a meeting of the membership body, or may be made in writing addressed to the Recording Secretary. When no regu-

larly scheduled meeting of the membership body is held within forty-five (45) days of receipt of the appeal, the Local Union Executive Board may consider and rule on the appeal.

(b) AMALGAMATED LOCAL UNION. In an Amalgamated Local Union an appeal must be made first at a meeting of the membership body of the appellant's unit or in writing addressed to the Recording Secretary or Chairperson of the appellant's unit. When no regularly scheduled meeting of the membership body of the unit is held within forty-five (45) days of the receipt of the appeal, the unit Committee or unit Executive Board may consider and rule on the appeal.

An appeal from the unit is made to

the Amalgamated Local Union's delegate body, where such exists, or to the general membership meeting when no delegate body exists. This appeal shall be taken by submitting a written appeal to the Amalgamated Local Union's Recording Secretary. When no membership or delegate body meeting is held within forty-five (45) days of receipt of this appeal, the Local Union Executive Board may consider and rule on the appeal. The Amalgamated Local Union shall review the appeal, with the aid of an investigating committee or otherwise, and shall determine the appeal; but if a unit Trial Committee is involved in the proceedings, it shall not select its own Trial Committee to retry the case.

(c) OTHER SUBORDINATE BODIES. An appeal to other subordinate bodies, in matters within their areas of responsibility under this Constitution, may be made at a meeting of the membership or delegate body or may be made in writing to the Recording Secretary. When no regularly scheduled meeting of the membership or delegate body is held within forty-five (45) days of receipt of the appeal, the Executive Board of the subordinate body may consider and rule on the appeal.

(d) INTERNATIONAL EXECUTIVE BOARD. An appeal to the International Executive Board shall be made in writing, signed by the member(s) and addressed to the International Executive Board in care of the International President. The appeal shall set forth

the action or decision being appealed, shall be as specific and detailed as possible, and shall include all information available in support of the appeal.

APPELLATE CASES. The International Executive Board has appellate jurisdiction to consider and decide all appeals submitted to it from any decision or action of a Local Union, Amalgamated Local Union or other subordinate body; except in the relevant types of cases set forth in Section 2(b) of this Article, the International Executive Board shall entertain an appellate case only when it has been ruled upon by the appropriate membership or delegate body. In this sort of appeal, the appellant should also send a copy of her/his appeal to that body's Recording Secretary.

Upon receipt of an appeal, the International President shall secure from the Local Union, Amalgamated Local Union or other subordinate body, a complete statement of the matters in issue, including copies of all charges and records, minutes, transcripts of testimony and other material relating to the appeal.

ORIGINAL MATTERS. The International Executive Board has original jurisdiction to consider and decide all appeals submitted to it from any decision or action of an International Officer, Regional Director, International Representative or any administrative arm of the National Department of the International Union, except in the relevant types of cases set forth in Section 2(b) of this Article.

DISPOSITION BY AN APPEALS COMMITTEE.

The International Executive Board shall appoint a two (2) member Appeals Committee to consider the appeal and make recommendations. This Appeals Committee shall be composed of members of the International Executive Board, but shall not include the Regional Director of the region from which the appeal originates. The appeal and any information secured by the International President shall be forwarded to the Appeals Committee. After a review of the appeal and record, the Appeals Committee may hold a hearing before either the full Committee or in its discretion one of its members unless the Appeals Committee concludes that no useful purpose would be served by a hearing, in which event the Appeals

Committee in its discretion may make recommendations on the appeal without a hearing. The Appeals Committee shall make a recommendation which, together with the full record, shall be submitted to a Nine (9) Member Committee of the International Executive Board, of which Five (5) members, or their designee(s), shall constitute a quorum. The Nine (9) Member Committee shall consider the record, together with the Appeals Committee's Recommendations, and shall make a decision on the appeal.

DISPOSITION BY THE INTERNATIONAL PRESIDENT. The International President may, in his discretion, decide an appeal rather than submitting it to an Appeals Committee. In such a case, the International President may designate a representative to

conduct any investigation or hearing deemed necessary, in accordance with the procedures of this Sub-section. The International President shall base her/his decision on the files and records of the case, and such briefs as may be submitted. In any appeal involving the handling or disposition of a grievance against an employer, the decision of the International President shall be submitted to the Nine (9) Member Committee of the International Executive Board.

REVIEW BY THE FULL INTERNATIONAL EXECUTIVE BOARD. Both where the appeal has been decided by the Nine (9) Member Committee of the International Executive Board and where it has been decided by the International President, copies of the decision shall be sent to

all members of the International Executive Board. The decision shall become the decision of the full International Executive Board unless, within ten (10) days, one or more members of the International Executive Board raises an objection to the decision, in which case the appeal shall be referred for decision to the International Executive Board at its next regular meeting. The International President shall promptly notify all parties concerned of the decision of the International Executive Board. The International Executive Board shall use its best efforts to render its decision within sixty (60) days of receipt of the appeal by the International President.

(e) CONVENTION APPEALS COMMITTEE. An appeal to the Convention Appeals

Committee shall be made in writing, signed by the member(s) and addressed to the Convention Appeals Committee in care of the International President.

JURISDICTION AND PROCEDURE. The Convention Appeals Committee has jurisdiction to consider and decide all appeals submitted to it from any decision or action of the International Executive Board or an International Trial Committee except in the types of cases set forth in Section 2(b) of this Article. The Convention Appeals Committee shall meet at least semi-annually, at the International Union Headquarters, to act on all appeals that have been submitted to it at least thirty (30) days prior to the date established for its meeting. The administrative procedures for

the Convention Appeals Committee in handling appeals shall be established by the International Executive Board, subject to review by subsequent Constitutional Conventions. All decisions of the Convention Appeals Committee shall be final and binding.

SELECTION OF CONVENTION APPEALS COMMITTEE. The Convention Appeals Committee shall consist of a member and a first and second alternate from each region to be selected by lot from the delegates from each region, when they elect their Regional Director. To provide continuity, members of the Convention Appeals Committee shall be selected from one-half of the regions at each Convention. Such members selected shall serve for two (2) Convention terms. In the event a vacancy occurs on the Convention Appeals

Committee, it shall be filled by the ranking alternate from that region. All remaining vacancies shall be filled by lot at the next regular Constitutional Convention.

(f) PUBLIC REVIEW BOARD. An appeal to the Public Review Board shall be made in writing, signed by the appellant, and addressed to the Public Review Board care of the International President.

JURISDICTION. In addition to the jurisdiction conferred elsewhere in this Constitution, the Public Review Board has jurisdiction to consider and decide appeals from any decision or action of the International Executive Board or an International Trial Committee.

Where the case arises under Article 10, Section 12; Article 12, Sections 2 and 3; Article 16, Section 7; Article 30;

Article 31; Article 36, Sections 9 and 10; Article 38, Sections 11 and 12; or Article 48, Sections 5 and 6;

Where the International Executive Board, pursuant to Article 12, Section 17, has reviewed the action or decision of its administrative arm, or where the International Executive Board has decided an appeal which concerns action or inaction relative to the processing of a grievance against an employer, subject, however, to the limitation of Section 4(i) of thisArticle; and

In any other case in which the International Executive Board has passed upon an appeal from the action of a Local Union, Amalgamated Local Union, or other

subordinate body, except in the relevant types of cases set forth in Section 2(a) and (b) of this Article.

DETERMINING JURISDICTION. In cases that involve the processing of grievances, the Public Review Board shall first determine whether the specific allegation upon which appellant claims the Public Review Board's jurisdiction to be based is or is not true. If the jurisdictional allegation is found to be false, it shall dismiss the appeal. If the appeal is thus dismissed, the appellant may, within thirty (30) days of notification of the dismissal, appeal the case in the Convention Appeals Committee, provided that in such an appeal, the appellant may not again raise any issue which the Public Review Board

resolved in dismissing for lack of jurisdiction.

LIMITATION. In no event shall the Public Review Board, under this or any other article, have jurisdiction to review in any way an official collective bargaining policy of the International Union.

PROCEDURES. If the appellant elects to appeal to the Public Review Board, the appeal shall be considered by the full Board, or a panel thereof. Where the Public Review Board has jurisdiction, the full Board or panel shall decide and dispose of all matters raised by the appeal. The Public Review Board, pursuant to Article 32, Section 6, shall establish its own rules of procedure including those governing the extent and scope of hearings.

When notified that an appeal to the Public Review Board has been filed, the International President shall forward to the Chairperson of the Public Review Board all documents and records in the case. After studying said documents and records, the Public Review Board, or a panel thereof, shall hold a hearing, unless it concludes that the appeal is unsubstantial or that no useful purpose would be served by a hearing; in which event the appeal may be decided or dismissed without a hearing.

The Public Review Board or panel thereof shall upon due consideration issue its decision, which shall be final and binding on all parties.

Section 4. GENERAL REQUIREMENTS. The following rules, unless otherwise indicated, shall govern all levels

of the foregoing appeal procedure.

(a) CONTENTS OF APPEAL. Any appeal should set forth the action or decision being appealed and should include all information available in support of the appeal. The appeal should be as specific and detailed as possible and must be signed by the member(s).

(b) CALCULATION OF TIME. The time limits of Section 4(c) of this Article begin to run from the time the appellant first becomes aware, or reasonably should have become aware, of the alleged action or decision appealed. In the case of an appeal from a decision of the International Executive Board, the time limit shall begin to run when the appellant first

receives notice of the decision. For purposes of this Article, "day" means a calendar day. If mailed, an appeal will be considered filed on the date it is post marked.

(c) TIME LIMITS FOR APPEAL. To be considered, an appeal must comply with these time limits, if no other time limit is specifically set forth in this Constitution: Appeal to Local Union -- sixty (60) days; Amalgamated Local Union -- Appeal to unit, sixty (60) days, appeal from unit to Amalgamated Local Union itself, thirty (30) days appeal to other subordinate body -- sixty (60) days; appeal to International Executive Board -- appellate or original cases, thirty (30) days;

appeal to Convention Appeals Committee -- thirty (30) days; appeal to Public Review Board -- thirty (30) days.

(d) EXTENSIONS OF TIME. In the case of an appeal to a Local Union, Amalgamated Local Union, or other subordinate body, or in the case of an appeal to the International Executive Board or Convention Appeals Committee, the International President may waive the time for filing the appeal if warranted by the circumstances.

(e) COMPLIANCE PENDING APPEAL. The decision of the lower tribunal, in all cases, must be complied with before an appeal can be accepted by the next tribunal in authority and shall remain

in effect until reversed or modified. The International President may, upon written application of an appellant, waive in whole or in part requirements of such compliance where unusual circumstances warrant it.

(f) COUNSEL. Any party to an appeal before the International Executive Board, Convention Appeals Committee or Public Review Board, shall be permitted representation by counsel or other representative of her/his choice. Unless otherwise specified in this Constitution, counsel are not permitted before a Local Union. Amalgamated Local Union, or other subordinate body, except as provided in Article 31,

Section 5. The party retaining counsel, or other representative, shall bear any cost of such representation.

(g) BRIEFS. Any party to an appeal may submit a brief or other written statement of position.

(h) HEARINGS. Hearings, when held, shall be such as, in the discretion of the tribunal, shall bring to light all the facts and issues involved. The appellant and appellee (or their representatives) shall be required to appear, with such witnesses as they may choose, and shall answer fully and truthfully all questions put to them. The parties shall be afforded full opportunity to present their respective positions on all

matters bearing on the action, decision or penalty under review. A hearing held by the International Executive Board, through its Appeals Committee or the International President, shall be held as close to the locality from which the appeal originates as possible in order to minimize the expense and inconvenience to the parties. A hearing before a panel or committee of a reviewing tribunal is deemed a hearing before the full reviewing tribunal.

(i) GRIEVANCE AND RELATED APPEALS. In any appeal to the Public Review Board, under Section 3(f) of this Article, concerning the handling of a grievance or other issue involving a collective

bargaining agreement, the Public Review Board shall not have jurisdiction unless the appellant has alleged before the International Executive Board that the matter was improperly handled because of fraud, discrimination or collusion with management, or that the disposition or handling of the matter was devoid of any rational basis.

Section 5. OBLIGATION TO EXHAUST INTERNAL UNION REMEDIES. It shall be the duty of any individual or body, if aggrieved by any action, decision or penalty imposed, to exhaust fully the individual or body's remedy and all appeals under this Constitution and the rules of this Union before going to a civil court or governmental agency for redress.